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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,935	02/09/2004	Nadja Jungmann	17350	8627
23389 7590 09/28/2007 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			EXAMINER HUI, SAN MING R	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 09/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/774,935

Applicant(s)

JUNGSMANN ET AL.

Examiner

San-ming Hui

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2-9-04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of the specie of polymer recited in claim 4, i.e., 2-dimethylaminoethyl methacrylate/methyl methacrylate/n-butyl methacrylate copolymer, in the reply filed on July 24, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The claims have been examined to the extent they read to the elected specie.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,443,479 ('497) in view of JP07096166 A (herein after referred as '166, the reference is from the IDS filed 2/9/2004), also provided is the machine translation of '166's detailed description.

'497 teaches microcapsule composed of acid-soluble polymer such as the elected copolymer (See col. 2, lines 54-56, col. 12, Example 12). '497 also teaches the encapsulating material comprising ethylcellulose (See for example claim 1). Within the

Art Unit: 1617

microcapsule, vitamin C can be incorporated as the core actives (See col. 3, lines 55-56). The particle size of the microcapsule is disclosed as 5 to 1000 $\mu$ m (See col. 3, line 54).

'497 does not expressly teach the microcapsules used in cosmetics. '497 does not expressly teaches the weight ratio of the microcapsules and that of the individual polymer as 60-40% of 2-dimethylaminoethyl methacrylate, 20-30% of methyl methacrylate and 20-30% of butyl methacrylate. '497 also does not expressly teach the molecular weight of the copolymer as 50,000 to 250,000g/mol. '497 does not expressly teaches the shape of the microcapsules.

'166 teaches microcapsules with the same copolymer (i.e., 2-dimethylaminoethyl methacrylate/methyl methacrylate/n-butyl methacrylate colymer) as useful in cosmetic product (See the abstract, paragraph [0035]). The microcapsules are designed being dissolved in the skin pH (See paragraph [0048]).

It would have been obvious to one of ordinary skill in the art at the time of invention to optimize the molecular weight of the polymer and the weight ratio of the copolymer. It would have been obvious to one of ordinary skill in the art at the time of invention to optimize the shape of the microcapsules. It would have been obvious to one of ordinary skill in the art at the time of invention to employ the microcapsule made of 2-dimethylaminoethyl methacrylate/methyl methacrylate/n-butyl methacrylate copolymer in cosmetic products.

One of ordinary skill in the art would have been motivated to employ the microcapsules made of 2-dimethylaminoethyl methacrylate/methyl methacrylate/n-butyl

Art Unit: 1617

methacrylate copolymer taught in '497 into cosmetic products since such microcapsules are known to be useful in cosmetic field. Employing such microcapsules will release the active directly onto the skin and have beneficial effects. One of ordinary skill in the art would have been motivated to optimize the weight ratio of the copolymer and the individual polymer since optimization to the effected parameter is considered obvious as being within the purview of skilled artisan. Furthermore, one of ordinary skill in the art would have been motivated to formulate the microcapsules into any shape, including balled shaped (sphere) as it is considered as being within the purview of the skilled artisan, absent evidence showing criticality of the shape recited. One of ordinary skill in the art would have been motivated to optimize the molecular weight of the polymer as the molecular weight of the polymer will affect the physical properties of the polymer. Therefore, choosing the appropriate molecular weight of the polymer would be seen as optimization of the effect parameters of the cosmetic product.


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (571) 272-0626. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, PhD., can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
San-ming Hui  
Primary Examiner  
Art Unit 1617